

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
May 20, 2010**

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**Members Present**

Judy Wise, Chair	James Arnold
John Greenfield	Rian Van Leuven
Roy Galbreaith	Mike Haxby
David Whaley	Max Sheils
Steve Millard	Linda Sams
Scott Jones	Representative Takasugi
Senator Andreason	Glenna Christensen

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**Members Absent**

James Alcorn  
Troy Watkins

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**Industrial Commission**

Chairman R.D. Maynard  
Commissioner Thomas E. Limbaugh  
Commissioner Thomas P. Baskin  
Director Mindy Montgomery  
Secretary Nancy Beeson

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**INTRODUCTIONS**

After introductions of the members and public attendees were conducted, Commission Director Mindy Montgomery announced that long time Financial Officer Don Robbins was retiring from the Commission at the end of May. Ms. Montgomery also introduced the Commission's new Financial Officer, Jane McClaran, who has been with the state for 18 years. Ms. McClaran gave a brief overview of her work experience.

**MINUTES**

The Minutes of February 24, 2010 were reviewed. Upon motion by Rian Van Leuven, seconded by Dave Whaley, the Minutes were approved as written.

**PROPOSED STATUTE CHANGES – PROFESSIONAL FIRE FIGHTERS OF IDAHO**

Mike Walker Executive Vice President of the Professional Fire Fighters of Idaho (PFFI) and Rob Shoplock, also with PFFI, presented PFFI's ideas on proposed changes to the Workers' Compensation laws regarding occupational diseases related to fire fighters. Mr. Shoplock reported that PFFI is working to add more presumptive occupational diseases to the Workers' Compensation laws including 11 cancers, 5 blood borne pathogens, heart attack, and stroke. Mr. Shoplock added that the proposed changes would include different timelines of 5 years to 15 years for eligibility depending on the disease. For instance, an employee who contracts brain cancer would have had to have worked as a firefighter for at least ten years before claiming a presumption.

No written material has been drafted by PFFI as they would rather have discussions about the changes before drafting a proposal. Mr. Shoplock reported that to his knowledge only two claims for cancer have been submitted as workers' compensation claims and both were denied. Mr. Shoplock noted that states with similar legislation have incurred about ½ to 1 claim per year and envisions that Idaho's claim rate would be the same. Enacting this legislation would add a cost of about 2% to 6 % for each division according to Mr. Shoplock. For example, it would cost a division with a \$4 million dollar budget about \$6,000 annually.

Mr. Shoplock stated that although there is nothing in writing at this time, PFFI is looking to model proposed legislation after New Mexico's legislation that passed in 2009 (Senate Bill 303). The presumption created in New Mexico's legislation has a lot of safeguards for rebuttable of presumption such as someone who has family risk factors, smokers, etc.

After discussion, PFFI representatives were invited to participate in the existing Advisory Committee's subcommittee studying the Occupational Disease laws. Dave Whaley suggested that it would be beneficial to present PFFI's proposed amendments to the Advisory Committee prior to submission to the legislature.

### **Industrial Special Indemnity Fund – James Kile**

James Kile was introduced as the new Manager of the Industrial Special Indemnity Fund (ISIF) as former Manager Ted Roper recently retired. Mr. Kile stated that his goal is to continue to work on closing the ISIF to new claims, and asked that the Advisory Committee reinstate the ISIF subcommittee to assist him in getting legislation presented next year to accomplish this goal. Also, there are two amendments that were added to last year's proposed legislation that Mr. Kile would like to discuss: the subrogation language and the language related to the Wernecke Supreme Court decision. The function of the subcommittee according to Mr. Kile will be to clean up last year's proposed language. He hopes to have legislation ready by the end of July or first part of August in order to discuss the proposed changes to close the ISIF to new claims with as many people as possible in an effort to alleviate any fears and objections prior to the legislative session.

### **Subcommittee Reports:**

Occupational Disease Laws - (*Chair John Greenfield, Max Sheils, James Arnold, Mike Haxby, and ex-officio members: Jack Barrett, Woody Richards, Alan Gardner, and Blair Jaynes*) - Mr. Greenfield reported that prior to the last Advisory Committee meeting the subcommittee met and had a great discussion. At the conclusion of that meeting the attendees were suppose to write Mr. Greenfield with their ideas, but as yet he has not received any. Mr. Greenfield said he would be proactive and contact each of the members and ask them to write him with their ideas on what changes they would like to see. Mr. Greenfield stated that he will also have the representative(s) from PFFI attend the next subcommittee meeting.

Reasonable Payment of Medical Fees (Neel) – (*Chair James Arnold, Roy Galbreaith, Mike Haxby, Max Sheils, John Greenfield, and ex-Officio members: Dan Bowen, Darin*

*Monroe, Scott McDougall, Commissioner Baskin, and Woody Richards)* – Subcommittee Chair James Arnold reported that at the subcommittee’s last meeting the ball shifted to the court of the defense. Mr. Arnold has had discussions with attorneys Dan Bowen and Max Sheils on preparations for the next meeting. The subcommittee is close to scheduling another meeting.

Expert Medical Fees (Depositions/Testimony) – (*Chair James Arnold, Glenna Christensen, Troy Watkins, Linda Sams, Max Sheils, John Greenfield, and ex-officio Patti Vaughn*) – Subcommittee Chair James Arnold stated that he recently learned that there is a group from the Industrial Commission meeting with providers and talking to the medical community about Workers’ Compensation including the importance of provider participation in depositions and testimonies and the fees associated with those actions. Mr. Arnold volunteered to accompany the Industrial Commission group while in eastern Idaho to further discuss the roles and needs of attorneys in which providers can assist. Mr. Arnold will coordinate his participation with Jennifer Poole, Supervisor of the Claims and Benefits Division.

Commissioner Baskin stated that he has been working with Dr. Watkins on this issue as well, and at Dr. Watkins’ invitation Commissioner Baskin went to St. Alphonsus’ Hospital to speak with staff physicians and has agreed to speak with them again. Commissioner Baskin and Dr. Watkins are also working to set up a session with the physicians at St. Luke’s Hospital. Commissioner Baskin reported that in discussions with Dr. Watkins it is believed that there is a real disconnect in a lot of areas between physicians and the workers’ compensation community. Dr. Watkins has a strong sense that many physicians shy away from the workers’ compensation area of law and depositions because the physicians don’t understand it. Commissioner Baskin agreed to prepare a tutorial and teach physicians about workers’ compensation and include the importance of their participation and charging reasonable fees for depositions and providing testimony.

IDAPA 17.02.03, Security for Compensation, Study of Proposed Rule Changes – (*Chair, Rian Van Leuven, Roy Galbreath, Mike Haxby, Linda Sams, Dave Whaley, and ex-officio members: Don Robbins, Woody Richards, Kent Rock, Lynn Thompson, Kelly Paananen, Jeanne James, Tim Tucker, Bruce Hock, and Bob Erickson*) – Subcommittee Chair Rian Van Leuven reported that a well-attended meeting was held with surety representatives and self-insured employers. Some of the items discussed were how to address the needs of injured employees and provide benefits if a company is under fiscal stress or becomes insolvent. Members talked about the start up of self-insured employers, reporting issues, and the formula for reserving funds to cover current costs and anticipated costs without having to double reserves that could make it too costly to self-insure. Public entities asked for some relief on their security deposit requirements as they contend that they will never go out of business. However, it was agreed that there needs to be some accountability for the possibility of bankruptcy. Commissioner Maynard noted that workers’ compensation benefits are dischargeable in bankruptcy proceedings in Idaho which would leave the injured worker without recourse. Mr. Van Leuven reported that the Commission will make some amendments to IDAPA 17.02.03 and send

the revised information to the subcommittee members who will meet again on August 10, 2010.

*Public Comment:*

Woody Richards reported that the Western Guaranty Association would not be in favor of eliminating the grandfather clause in regard to security deposits for insurance carriers. Currently the rules allow companies approved prior to July 15, 1988, to maintain a \$25,000 minimum security deposit. Eliminating the grandfather clause would require all insurers to have a minimum security deposit of \$250,000.

**Industrial Commission Report:**

Deputy Attorney General Blair Jaynes reported that there are two temporary and proposed rules that have been submitted and will be published in the July Bulletin: IDAPA 17.02.05 and 17.05.01. Mr. Jaynes explained that IDAPA 17.02.05 was submitted to comport with the statute changes enacted by the 2010 legislature in Section §72-528, Idaho Code, to reduce the redundancy of reporting attorneys costs and fees already required on lump sum settlements and Attorney Fee memorandums. The change requires Forms 1022 and 1023 be filed only if requested by the Commission.

According to Mr. Jaynes, IDAPA 17.05.01 is a temporary and proposed rule that implements new statutory authority to adopt a medical fee schedule for benefit payments to providers under the Crime Victims Compensation Act. The rule adopts the current workers' compensation medical fee rules to provide a cap on medical fees paid to providers. Mr. Jaynes explained that the funds to pay these benefits come from penalties assessed in findings of guilt against the criminals, restitution, donations, and federal funds. Last year the program ran low of funds and, as the statute allows, payments were reduced by 25% to avoid depleting the Program's funds. Mr. Jaynes noted that this proposed and temporary rule will allow a more stable fee payment for providers.

Director Mindy Montgomery reported that a full schedule of hearings has been made throughout the state to inform providers of the changes.

Paperless Initiative - Commissioner Baskin reported that at the IAIABC Conference in Minneapolis last fall a presentation was given by Matt Bryant from Virginia's Industrial Commission on electronic data manipulation to become paperless. Mr. Bryant's story was of all the pitfalls that await both internally and externally from this effort. Mr. Bryant's presentation was timely according to Commissioner Baskin since coming to the Commission he has noticed that there are some efficiency losses in the way the Commission handles paper. The Commission has asked Mr. Bryant to present an overview of the processes Virginia used to become a paperless agency. Commissioner Baskin noted that Virginia's Industrial Commission has an entirely electronic driven adjudication department that works very efficiently. Although there was some external resistance, the current process is seamless and allows electronic calendaring and all documentation to be filed electronically.

The Commissioners and some of the department heads will attend the presentation to be held early in June. Commissioner Baskin noted that the goal is to reduce everything to data rather than accepting paper or even PDFs. The Commission is not in a position to do much in these economic times, but in the future if the Commission decides to proceed with this project, Commissioner Baskin stated that it would be a labor and cost saving effort. Discussion was held on the possible loss of some information by becoming paperless and the possible problems in reporting it may cause for some small employers or small sureties.

Attorney Fees – Commissioner Baskin informed the members that the Commission issued a new decision addressing a request for approval of attorney fees that will be out on the Commission’s website in the next day or so. (*Kulm v. Mercy Medical Center*) The decision is an effort to apply some analysis to explain what is meant by the term “primarily or substantially secure the fund out of which the attorney is to be paid.”

August Elections - Chair Judy Wise announced that elections will be held at the next meeting in August and nominees are needed for those whose terms are expiring. Employee Representative Scott Jones will not be serving again, Employer Representative Judy Wise announced that she would be willing to serve again, Max Sheils, Attorney Representative for Employers, will not be serving another term. Gardner Skinner has submitted his name for the Attorney Representative for Employers and was in attendance at today’s meeting. Mr. Sheils asked all the members to contact anyone they think would be interested in serving on the Advisory Committee. The following Advisory Committee positions expire in August:

- 1 – Person Representing Workers
- 1 – Person Representing Employers
- 1 – Attorney Primarily Representing Employers
- 1 – Attorney Primarily Representing Workers
- 1 – Person Primarily Representing Physicians

**The next date for the Advisory Committee meeting was scheduled for August 11, 2010.**